RMS Foundation, Inc., d/b/a Queen Mary *and* Juan J. Vaca *and* International Union of Operating Engineers, Local Union No. 501. Cases 21–CA–29292 and 21–CA–29433

July 27, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, BROWNING, AND COHEN

On March 31, 1994, Administrative Law Judge Michael D. Stevenson issued the attached decision. The General Counsel and the Respondent each filed exceptions and a supporting brief, the Charging party filed a brief in opposition to the Respondent's exceptions, and the Respondent filed a brief in opposition to exceptions and a reply brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's ruling, findings,[1] and conclusions[2] only to the extent consistent with this Decision and Order and to adopt the recommended Order as modified.[3]

We find, for the reasons set forth below and contrary to the judge, that Chief Engineer Ivy Jackson is a statutory supervisor. Thus, Jackson's statement to Gerald Ray Viano that Viano was not hired because of his union and protected concerted activities is attributable to the Respondent. The judge found that, if Jackson were a supervisor, the Respondent violated Section 8(a)(1) and (3) when it failed to hire Viano. We agree with this finding.

According to Section 2(11) of the Act,

> The term ''supervisor'' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is phrased in the disjunctive. Thus, the exercise of authority (requiring independent judgment) with respect to any one of the actions specified is sufficient to confer statutory supervisory status.

In February 1993, when the Respondent acquired the lease to operate the Queen Mary, Ivy Jackson made effective recommendations to hire, or not to hire, employees. According to Jackson's unrebutted testimony, he effectively recommended to his supervisor, Facilities Director Jorge Gonzalez, that the Respondent hire Vispi Shroff. In fact, Jackson had recommended hiring every employee who was working at the power plant at the time of the hearing in this case. Further, as noted by the judge, Jackson effectively recommended that the Respondent not hire Viano. Gonzalez admitted that he decided not to hire Viano based on Jackson's recommendation.[4] These effective hiring recommendations by Jackson are alone sufficient to confer statutory supervisor status on Jackson.[5]

However, we need not base our finding solely on Jackson's ability to effectively recommend hiring. Jackson's unrebutted testimony shows that he effectively recommended that certain employees be discharged or disciplined. Thus, he recommended that employee Everett Smith be discharged because Smith ''wasn't working out'' and that ''Gonzalez took care of it.'' He also reported to Gonzalez a rule infraction by employee Jimi Kirkland and recommended that Kirkland be given an oral warning. Gonzalez issued the recommended discipline. Contrary to the judge, we find that Jackson's role in these actions was more than ''merely reportorial.''

We find that Ivy Jackson's authority to make effective recommendations regarding hiring, discipline, and discharge render him a statutory supervisor.[6] Accordingly, his statement to Viano sometime around January

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] We adopt the judge' findings and conclusion that the Respondent violated Sec. 8(a)(1) and (3) of the Act by refusing to hire Eugene Quental. Our decision is reinforced by the fact that the decision not to hire Quental was made by the Respondent's facilities director, Jorge Gonzalez, who we find, infra, was also involved in the unlawful failure to hire Gerald Ray Viano.

[3] The Respondent (RMS) has excepted to what it has characterized as ''the ALJ improperly inferr[ing] that RMS is related to Disney, the former management company of the Queen Mary, and that RMS was thereby obligated to 'rehire' Disney's former employees.'' The complaint does not allege that the Respondent is related to Disney. We do not construe the judge's decision to have made that inference; nor do we make such an inference.

[4] Although the judge credited Gonzalez' testimony that he made the final decision not to hire Viano based on recommendations from both Jackson and Ludwig, Ludwig's involvement in the hiring process does not affect our finding that Jackson is a statutory supervisor.

[5] In finding that Jackson did not make effective hiring recommendations, the judge relied on the fact that Jackson recommended that two applicants be hired, ''but they weren't.'' The record indicates, however, that on these occasions, which occurred between March and May 1993, Gonzalez did not disagree with Jackson's specific recommendations about whom to hire, but stated instead that he did not want to hire any more employees. We therefore find that these incidents concern staffing level decisions and are not inconsistent with our finding that Jackson made effective hiring recommendations.

[6] In finding Jackson to be a supervisor, Member Cohen also relies on Jackson's authority to schedule employees and to assign work.

1993—that ''we don't want you back because of problems you caused with the Union and [grievants] Gary Handlin and Dave Metcalff''[7]—is attributable to the Respondent and is evidence of an unlawful motive for not hiring Viano.

We find that the General Counsel has established a prima facie case that the Respondent's failure to hire Viano was unlawful. Thus, Viano, who had been the shop steward, was the only one of five power plant employees who had worked for the former lessee (Disney) who was not hired by the Respondent. While Viano's application for employment was still pending, the Respondent hired two employees who had never worked at the power plant before. Jackson's January statement to Viano explained, at least prima facie, why this was so.[8]

Turning to the Respondent's defense, we note that the judge credited Gonzalez' testimony that he decided not to hire Viano based on recommendations from Jackson and also from Ludwig, who was in charge of the power plant in 1991 and 1992 and claimed that Viano did not agree with a new system of giving engineers work orders while they were on watch in the power plant. Nevertheless, we find unpersuasive and pretextual the Respondent's contention that it did not hire Viano because he had been a marginal employee whose job performance at the Queen Mary historically had been inadequate. Ludwig was not called to testify. There is no evidence that Viano ever failed to follow the work order system or was ever disciplined or received a performance evaluation reflecting inadequate work performance. Moreover, the Respondent's contention is inconsistent with the evidence that, in 1992 while Ludwig was plant manager, Jackson appointed Viano to act as chief engineer during Jackson's absence.

We find, therefore, that the Respondent violated Section 8(a)(1) and (3) by refusing to hire job applicant Gerald Ray Viano because of his union and protected concerted activities as a union steward under Queen Mary's prior management. We shall modify the Order accordingly.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, RMS Foundation, Inc., d/b/a Queen Mary, Los Angeles, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraphs 2(a) and (b).

''(a) Offer Eugene Quental a position as a journeyman carpenter and Gerald Ray Viano a position as a maintenance engineer or, if those jobs no longer exist, substantially equivalent positions.

''(b) Make whole Eugene Quental and Gerald Ray Viano for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of the decision.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to hire job applicants because they previously served as union stewards or engaged in other protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Eugene Quental a job as a journeyman carpenter and Gerald Ray Viano a job as a maintenance engineer or, if those jobs no longer exist, we will offer them substantially equivalent positions.

WE WILL make Eugene Quental and Gerald Ray Viano whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, less any net interim earnings, plus interest.

RMS FOUNDATION, INC., D/B/A QUEEN MARY

Robert J. DeBonis, Esq., for the General Counsel.
Alan M. Brunswick & Marc D. Mootchnik, Esq. (Rintala, Smoot, Jaenicke & Brunswick), of Los Angeles, California, for the Respondent.
Adam N. Stern, Esq. (Levy, Goldman & Levy), of Los Angeles, California, for the Charging Party.

[7] This was a reference to Viano's activities as union steward under a prior lessee of the Queen Mary, for whom Jackson also had worked.

[8] Because of Jackson's role in the initial hiring process, his statement to Viano, which is evidence of the Respondent's union animus, also strengthens the General Counsel's prima facie case concerning the Respondent's refusal to hire Quental.

DECISION

STATEMENT OF THE CASE

MICHAEL D. STEVENSON, Administrative Law Judge. This case was tried before me at Los Angeles, California, on October 5 and 6,[1] pursuant to two complaints[2] issued by the Regional Director for Region 21 of the National Labor Relations Board on April 30 (Case 21–CA–29292) and July 21 (Case 21–CA–29433) and which are based on charges filed by Juan J. Vaca (Case 21–CA–29292) and International Union of Operating Engineers, Local Union No. 501 (Vaca and the Union, respectively) on March 29 (Case 21–CA–29292) and on June 7. The complaint alleges that RMS Foundation, Inc., d/b/a Queen Mary (Respondent) has engaged in certain violations of Section 8(a)(1) and (3) of the National Labor Relations Act (the Act).

Issues

(1) Whether Respondent failed and refused to hire job applicants Jose Luis Vargas and Vaca because they were members of the Teamsters Union and had previously engaged in union and other concerted activities on behalf of the Teamsters Union, and to discourage employees from engaging in these activities and whether, acting through a supervisor, Respondent told Vargas and Vaca that Respondent would not hire them because they had previously worked as members of the Teamsters, and Respondent was only hiring persons affiliated with a different union.

(2) Whether Respondent failed and refused to hire job applicants Eugene Quental and Gerald Viano because they were members of the Union, had previously occupied the positions of shop steward, and had previously engaged in Union and other concerted activities on behalf of the Union and to discourage employees from engaging in these activities.

(3) Whether Respondent acting through a supervisor told an employee that he had not been hired because of the problems he had caused with the Union, because he had been shop steward and because of the grievances he had filed in the past.

All parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, to argue orally, and to file briefs. Briefs, which have been carefully considered, were filed on behalf of the General Counsel, the Charging Party, Operating Engineers Local 501, and Respondent.

On the entire record of the case, and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent admits that it is a California corporation, which operates a tourist attraction including a hotel and restaurant with an office and place of business located in Long Beach, California. If further admits that based on a projection of its operations since about January 1, at which time Respondent commenced its operations, Respondent, in conducting its operations described above, will annually derive gross revenues in excess of $500,000, and will annually purchase and receive at its Long Beach facility goods valued in excess of $50,000 directly from points outside the State of California. Accordingly, it admits and I find that it is an employer engaged in commerce and in a business affecting commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

Respondent admits, and I find, that both Teamsters Local 911 and Operating Engineers Local 501 are labor organizations within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. *The Facts*

1. Overview

On or about December 31, 1992, the Disney Corporation, then the lessee of the Queen Mary, laid off the last of its employees while Respondent continued to negotiate with the lessor, the city of Long Beach, California, for leasing rights to operate the Queen Mary. In February, Respondent became the new lessee of the property and began immediately to hire new employees. Many of those who desired employment had previously worked for the Queen Mary under Disney and they reapplied for their former jobs or any jobs that might be available. Included among the group of former employees seeking employment were the four alleged discriminatees in this case, Gerald Ray Viano, Eugene Quental, Juan Vaca, and Jose Luis Vargas. All save Vargas testified as General Counsel's witnesses.[3] None of the four were rehired, for reasons which the General Counsel claims to be unlawful. Respondent denies its employment decisions for these four were unlawfully motivated. To explore this case further and decide the issues, background is required.

2. The Queen Mary

The Queen Mary is a large cruise ship which once sailed the oceans of the world. In the 1970's, its sailing days over, the Queen Mary came to be permanently moored at docks in the city of Long Beach and was transformed into a hotel. Eventually the Queen Mary was joined by a second tourist attraction, the ''Spruce Goose'' an oversized aircraft once owned by Howard Hughes.[4] In addition, various shops, boutiques, restaurants, and even a small amusement attraction sprang up in and around the Queen Mary.

During its 4-year involvement with the Queen Mary, the Disney Corporation employed up to 1200 employees. By December 31, 1992, the number of employees had dwindled to about 400, a figure which included the 4 alleged discriminatees. By the time of the hearing, the employee complement had grown to about 575 employees.

On December 31, 1992, Respondent witness Stephanie Wright went to the Queen Mary and distributed employment

[1] All dates herein refer to 1993 unless otherwise indicated.

[2] By order of August 17, the Regional Director for Region 21 consolidated the two complaints for hearing.

[3] The General Counsel announced in his opening statement that Vargas had been located within the last few days before hearing and that he was not expected to testify due to his employment as an agricultural worker in the State of Washington. (Tr. 9.)

[4] The ''Spruce Goose'' is no longer a part of the Queen Mary attraction.

applications to Disney employees then being laid off. Wright had worked at the Queen Mary, under Disney and its predecessor between June 1981 and October 1989, as an executive in the human relations department. When she left, Wright took a position with a Riverside, California hotel owned by a man named Prevatil, who was later to become a principal in Respondent. According to Wright, at Prevatil's request, she distributed the employment applications to the laid-off workers so as to give them hope for reemployment (as Wright put it) and to give Respondent a ready pool of experienced employees to draw on when and if their negotiations with the city of Long Beach proved successful.[5]

Wright distributed about 400 employment applications and instructed recipients to fill them out later and mail them back to her at a Riverside, California P.O. box. She also explained to each recipient that there was no guarantee of future employment, given the facts that negotiations with the city of Long Beach had not been concluded and that Respondent did not even then exist.

3. Queen Mary employees

Under Disney's management, three unions represented various units of employees. These three unions were reduced to one under Respondent and, as I understand it, currently there are no unions representing employees. Here are the details. Operating Engineers Local 501 and the Seafarers Union both represented certain units of employees working in the power plant and related maintenance classifications Teamsters Local 911 represented certain employees working in the custodial department. When Respondent leased the Queen Mary, the Seafarers presented to management union authorization cards signed by a majority of an appropriate unit consisting of elements both from the Operating Engineers and the Teamsters former units. Then Respondent recognized the Seafarers and signed a collective-bargaining agreement with the Seafarers, the result of which was to reduce by approximately 50 percent the wages of some or all unit employees compared to wages being paid under union contracts with Disney. Then, according to Wright, a few weeks before hearing, at the request of Operating Engineers, the Seafarers Union abandoned the unit it formerly represented.

None of this is directly germane to the instant case except to note that under Disney, Viano and Quental had been shop stewards for the Operating Engineers and Vaca had been a shop steward for the Teamsters. In fact the General Counsel and counsel for the Operating Engineers contend that the three applicants were not rehired by Respondent for these very reasons.

4. Gerald Ray Viano

Between September 1976 and December 31, 1992, Viano worked in the power plant as a maintenance engineer. The power plant building is located a short distance from the Queen Mary and is responsible for providing power to the Queen Mary and its satellite operations. As such it must operate and be staffed 24 hours per day, 7 days per week. As of December 31, 1992, five employees were employed in the power plant including Viano.

The chief engineer and Viano's supervisor was Ivy Jackson who like all other Disney employees had been laid off on December 31, 1992; Jackson was then rehired in February. I will consider below whether Jackson is a statutory supervisor as claimed by the General Counsel and counsel for the Operating Engineers but denied by Respondent. For now, I note that Jackson had been a member of the Operating Engineers bargaining unit and was even a shop steward for the unit for a period of time before Viano took over the job in the mid-1980's and served through 1992.

Under Disney, Viano and Jackson never worked the same shift. And yet Viano felt he had a poor relationship with Jackson. Witness this exchange between Viano and Respondent's attorney on cross-examination:

> Q. Okay, now let's go to the trip you took to the Queen Mary. You testified that you asked [friend] Larry Carrera to accompany you as a witness ''in case they discriminated against me.''
>
> A. Yes
>
> Q. What led you to believe that you might be discriminated against?
>
> A. Because I wasn't hired back, and I knew how Ivy was.
>
> Q. What does that mean?
>
> A. That means I know how me and the Chief didn't see eye to eye.
>
> Q. On what?
>
> A. On several things.
>
> Q. Like?
>
> A. Like the way he talked to you. You couldn't discuss nothing with him. He, you know, he just had some kind of attitude deal.
>
> Q. All right. so you and he had a personality conflict.
>
> A. We did, but we never really pushed it with each other. I mean, I respected him as the Chief Engineer, and I imagine he did the same. We never got in any big quarrels or problems. [Tr. 49–50.]

The source of this ill will may have been intraunion charges filed by Viano against Jackson for discriminating against a fellow union member. Jackson elected not to contest the charges and he claims not to know the result. The record does not show when all this happened, but apparently the filing of charges predated the Disney layoffs.

In any event, on December 31, 1992, Viano received an employment application from Wright which he filled out and mailed back to her (G.C. Exh. 2). During January, Viano received one or more calls from an unidentified female caller who asked if he were still interested in employment at the Queen Mary. He assured the caller he was. Then Viano learned that two of his coworkers named Schroff and Perdue, neither of whom testified, had been rehired by Respondent. Later, Viano learned a third coworker named Smith had also been rehired. So Viano rounded up an unemployed friend named Larry Carrera to accompany him as a witness and both men drove to the Queen Mary power plant, where they encountered Jackson.

There is a conflict about exactly what was said. According to Viano, he asked Jackson why he had not been called back to work. At first Jackson made no answer, but when pressed by Viano, Jackson stated, ''We don't want you back because

[5] Wright testified that Respondent's policy was to give ''not special consideration, but consideration'' to employees who had worked at the Queen Mary in the past. (Tr. 287.)

of problems you caused with the Union and Gary Handlin and Dave Metcalff.'' To this Viano replied that he was just doing his job as shop steward.[6] In his account of the conversation, Viano was corroborated by his friend and General Counsel witness Larry Carrera, although Carrera could not recall the two names Jackson mentioned. Jackson admitted meeting with Viano and a friend in the power plant on the day in question and having a conversation with Viano at the time. Jackson however denied making the statement in question; instead, according to his testimony, Jackson told Viano that it was not his position to rehire but that it was being done by Jorge Gonzalez, also a witness in this case. After Viano said the Company was not supposed to discriminate against minorities and that he was a shop steward, Jackson responded, ''We are non union.'' Then at Viano's request, Jackson attempted to reach Gonzalez, but the telephones were not yet hooked up.

I find that Jackson made the disputed statement. Carrera's testimony tipped the balance for me because he recalled just enough of the conversation to be convincing, yet not so much as to indicate he was working from a script.

Jackson testified that he did indeed recommend to Gonzalez that Viano not be rehired because Viano had always been a marginal employee, doing at work only what he had to do, except for the final 6 weeks before layoffs, when like everyone else, his work improved in the hopes of being rehired. Jackson explained further that Viano's file contained no record of corrective action as a marginal employee, because it was Disney policy not to be strict with employees and to avoid discipline, except for serious matters.

Of the five employees working in the power plant on December 31, 1992, Jackson, Perdue, Schroff, Smith, and Viano, only Viano, the shop steward was not rehired. Smith was later fired by Gonzalez for poor work. Two new employees, Dudley and Kirkland, who had never worked for Disney, responded to a newspaper ''help wanted'' ad run by the Company in the spring, and were hired to work in the power plant.

5. Eugene Quental

Between October 1980 and December 31, 1992, Quental worked for the Queen Mary primarily as a carpenter. Two months before his layoff, Quental became lead carpenter for which his responsibilities included, making work assignments for other employees, making periodic checks that the work was done correctly and, of course, performing his own work as well. Quental was a member of a unit represented by the Teamsters and for the 40 or so members of the unit, he served as a shop steward for a period of 6 to 8 years until his layoff in December.

On December 31, 1992, Quental received an employment application from Wright which he subsequently filled out and returned (G.C. Exh. 5). In January, Quental talked by telephone with Gonzalez who told him the Company was not hiring carpenters, only electricians. Subsequently, Quental made several additional calls to the Company, trying to reach Gonzalez, but was unable to contact him. A former fellow worker named Bob Carroll, who had worked for Disney as a gardener told Quental at some point that Respondent was hiring carpenters. Caroll, who was not rehired, did not testify.

By late March, Quental went to the Queen Mary to see if he could find Gonzalez. While there, Quental went to the carpenter shop, where he observed three brothers named Padilla doing carpenter work. Two of the three, Miguel and Francisco, had worked for Quental when he was lead carpenter. None of the brothers testified. Then Gonzalez happened by and Quental attempted to discuss with him his job prospects, but Gonzalez said he was too busy. Quental told him that he knew Gonzalez would not hire him, but he asked at least for a letter of recommendation. Gonzalez told his secretary to prepare such a letter when she had time. No letter of recommendation however was ever sent.

As its first witness, Respondent called Jorge Gonzalez, Respondent's facilities director. Gonzalez oversees all maintenance operations, including the power plant. He supervises 32 employees at the Queen Mary and the 5 employees at the power plant already discussed. Gonzalez began employment at the Queen Mary in 1980 and like all other employees was laid off on December 31, 1992. Before he was rehired on February 3, Gonzalez spent the month of January on unpaid maintenance duty looking after the Queen Mary.

Gonzalez testified that he received five applications for carpenters, but he needed only two. He hired Miguel and Francisco Padilla, as carpenters because he was familiar with their work which was excellent. The third Padilla brother was hired not as a carpenter, but as a laborer. Gonzalez also made the decision not to hire Quental whom he described as a marginal employee performing work of average quality at a slow pace. In addition, Gonzalez testified he had observed Quental talking to employees daily, when Quental was supposed to be working. Some of the employees, talking to Quental, Gonzalez admitted, however were talking to him in his role as shop steward about their grievances.

On cross-examination, Gonzalez provided additional testimony. In 1986, Gonzalez and Quental worked together to reroof a house owned by Gonzalez and leased to tenants. Francisco Padilla had worked primarily in the banquet department under Disney and had performed carpentry work only on a supplemental basis. About 2 months before the hearing, Gonzalez had hired two additional carpenters who had not worked for Disney before, Tim Little and Donald San Pedro neither of whom testified. They had responded to a want ad placed by Gonzalez in a local paper although Quental's application for reemployment was still on file.

As to why Gonzalez never sent Quental a letter of recommendation as promised, Gonzalez explained that sometime after Gonzalez had promised to send the letter, Quental's wife called Gonzalez at his home and told Gonzalez that he was going ''to pay big time'' for not hiring Gene. Quental's wife also told Gonzalez that she would go to a television station and tell them that the Queen Mary had asbestos. She added that what Gonzalez did to Gene was really dirty and he was going to pay for it. Because Gonzalez resented the threats and held Quental responsible for his wife's call, he never sent the letter.

[6] Neither Handlin nor Metcalf testified, but according to Viano, they were former Disney unit employees who had filed several grievances, mostly over pay. On cross-examination, Viano recalled that among other grievances filed, Handlin had filed a grievance against Jackson who had taken a leadman position away from Handlin and given it to another employee. Metcalff filed one or more grievances over pay-related issues. How any of these grievances were resolved does not appear in the record.

6. Juan Vaca

Between 1984 and December 31, 1992, Vaca worked at the Queen Mary, the last 4 years as custodial lead in the housekeeping department. Approximately 10 other employees worked under Vaca. Before his layoff, Vaca worked on the graveyard shift doing generally the same work as his subordinates. This included stripping and waxing floors, mopping floors, and shampooing carpets.

In addition to his work at the Queen Mary, between 1989–1992, Vaca was a shop steward for the 250–300 employees who were represented by the Teamsters. Vaca handled a number of grievances during the 3-year period. Although only 3 to 4 grievances were actually filed, a total of about 10 were discussed by Vaca with his immediate supervisor, Ramiro Cedano, a witness for Respondent.

Cedano began working at the Queen Mary in September 1985 and continued until December 31, 1992. On February 5, Cedano was rehired and currently does the same work as he did before, which is that of supervisor in the Queen Mary's custodian department, with eight to nine employees working under him. As a supervisor, Cedano does no bargaining unit work and instead of work clothes he dresses in a dress shirt and tie.

On December 31, 1992, Vaca received an employment application from Wright, and filled it out, and mailed it back to her later (G.C. Exh. 6). According to Vaca, on March 25, 1993, he and another former Disney employee at the Queen Mary, Jose Luis Vargas, went to the Queen Mary where they met and spoke in Spanish with Cedano. Cedano asked the two men whom he knew from the time he was their supervisor under Disney, what they were doing there. Vaca explained they were looking for a job. Vaca testified that Cedano responded, ''No 'gallos' because you was working under the Teamsters contract and this new company is not planning to hire any more Teamsters.'' The word ''gallos,'' according to Vaca, literally ''roosters,'' is a nonoffensive slang term used by Cedano to refer to employees. In fact, Vaca testified he got along with Cedano when the two worked the graveyard shift. Cedano worked as Vaca's supervisor when he replaced Vaca's regular supervisor named Roger Avery

Cedano denied meeting with or speaking to Vaca and Vargas. Instead, he testified he last saw both on December 31, 1992. Cedano first learned that Vaca desired to return to work at the Queen Mary. when Cedano and two other supervisors, Avery and Arthur Jackson were assigned by their superior, Tony Amato, manager of the property services department, to work as a ''team,'' and to review the approximately 100 employment applications pending in February. Because at first, only five persons were to be hired, Amato told Cedano and the other supervisors to select from the applications the best people. To facilitate the selection process, applications were sorted into three piles, ''good,'' ''mediocre,'' and ''do not hire.''

According to Cedano, he and the other supervisors felt that Vaca was a slow worker who didn't do as good a job as the other employees. In addition, Vaca was said to be a complainer about Disney's grooming standards. Moreover, Vaca insisted on wearing a mustache in violation of Disney's grooming standards requiring employees to be clean shaven.

Like Vaca, Vargas also submitted an employment application to Respondent (G.C. Exh. 7). For Vargas, only his job performance was considered by Cedano and the others. It was found to be lacking when compared to the background and qualifications of other applicants. For both Vaca and Vargas, Cedano and Amato both denied that union affiliation played any role in their review of the applications.

Ultimately 5 were selected from the first group of 25 to 30 applications and Cedano and his teammates recommended to Amato that he hire them which he did. Among the five was a person named Saul Espinosa, a former member of the Teamsters bargaining unit and Gustavo Chavez, a former member of the Seafarers bargaining unit. The remaining three had worked for Amato at the Queen Mary under the prior lessees and were known to Amato to do good work. Between February and March, Amato hired 25 to 30 additional employees as custodians.[7] Among this group was an employee named Fernando Pantoja a former member of the Teamsters bargaining unit. Amato selected this larger group of new hires on his own without Cedano and the other supervisors making any recommendations.

In his testimony as a Respondent witness, Amato essentially corroborated Cedano's account of how new employees came to be hired and added some additional details. Amato worked at the Queen Mary between November 1984 and November 1990. Then he was rehired by Respondent on February 5, 1993. Before Leaving his job under Disney, Amato knew both Vaca and Vargas, as he had been their supervisor. Amato recalled Vargas as a complainer about the amount of work that had to be done.

While Amato was considering the employment applications of persons seeking jobs, Amato never spoke to Vargas. Amato however did speak to Vaca by telephone about February 23. Vaca asked Amato if he remembered Vaca. Amato told Vaca he did and Vaca said he had put in an employment application. Amato replied he had seen it already, but that only a few had been hired so far. Vaca asked to be considered and Amato agreed, saying Vaca would be considered with all other applicants. Amato added that anyone hired would have to join the Seafarers and that the hourly rates of pay were lower than under the Teamsters contract ($10/hr Teamsters; $5.50/hr Seafarers). To this, Vaca made no response.

Amato further testified that while he was certain that Vaca's and Vargas' employment applications were not in the ''good'' file, he could not recall if they were in the ''mediocre'' or ''do not hire'' files. Amato also could not recall if he hired anyone from the ''mediocre'' file. Finally, Amato testified that of the initial 30 hires, only about 6 to 8 persons had not worked at the Queen Mary previously.

B. *Analysis and Conclusions*

1. Applicable legal principles—Supervisors

At the outset, it is important to determine the supervisory status of Cedano and Ivy Jackson because they are alleged to have made certain statements, which if credited, would support the General Counsel's and the Charging Party's theories.

A supervisor is defined in Section 2(11) of the Act as:

[7] Disney employed approximately 70 custodians, while Respondent currently employs about half that number.

> [A]ny individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the forgoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

The law on the subject is well summarized by Administrative Law Judge Itkin in the case of *Amperage Electric*, 301 NLRB 5 (1991), of the judge's decision:

> Actual existence of true supervisory power is to be distinguished from abstract, theoretical, or rule book authority. It is well established that a rank-and-file employee cannot be transformed into a supervisor merely by investing him or her with a ''title and theoretical power to perform one or more of the enumerated functions.'' *NLRB v. Southern Bleachery & Print Works*, 257 F.2d 235, 239 (4th Cir. 1958), cert. denied 359 US 911 (1959). What is relevant is the actual authority possessed and not the conclusory assertions of witnesses. And while the enumerated powers listed in Section 2(11) of the Act are to be read in the disjunctive, Section 2(11) also ''states the requirement of independence of judgment in the conjunctive with what goes before.'' *Poultry Enterprises v. NLRB*, 216 F.2d 798, 802 (5th Cir. 1954). Thus, the individual must consistently display true independent judgment in performing one or more of the enumerated functions in Section 2(11) of the Act. The performance of some supervisory tasks in a merely ''routine,'' ''clerical,'' ''perfunctory'' or ''sporadic'' manner does not elevate a rank-and-file employee into the supervisory ranks. *NLRB v. Security Guard Service*, 384 F.2d 143, 146–149 (5th Cir. 1967). Nor will the existence of independent judgment alone suffice; for ''the decisive question is whether [the individual involved] has been found to posses authority to use [his or her] independent judgment with respect to the exercise [by him or her] of some one or more of the specific authorities listed in Section 2(11) of the Act.'' See, *NLRB v. Brown & Sharpe Mfg. Co.*, 169 F.2d 331, 334 (1st Cir. 1948). In short, ''some kinship to management, some empathetic relationship between [supervisor] and employee, must exist before the latter becomes a supervisor of the former.'' *NLRB v. Security Guard Service*, supra.

As the Board and the Seventh Circuit have noted, the Board owes a duty to employees not to construe supervisory status too broadly, for if the individual is deemed a supervisor, he loses the Section 7 rights Congress intended to be protected by the Act. *Phelps Community Medical Center*, 295 NLRB 486 at 492 (1989); *Westinghouse Electric v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. 1970). For that reason, the party contending that a person is a supervisor carries the burden of persuasion on that issue. *Adco Electric*, 307 NLRB 1113 fn. 3 (1992); *Biewer Wisconsin Sawmill*, 312 NLRB 506 (1993).

In determining whether someone is a supervisor, job titles reveal very little, if anything. See *NLRB v. Dickerson-Chapman, Inc.*, 964 F.2d 493, 497 (5th Cir. 1992). Actual duties, not job titles determine status. An employee cannot be transformed into a supervisor merely by the vesting of a title and theoretical power to perform one or more of the enumerated functions in Section 2(11) of the Act. *Advanced Mining Group*, 260 NLRB 486 (1982); *Hallandale Rehabilitation Center*, 313 NLRB 835 (1994).

a. *Cedano*

As noted above, Cedano is a ''supervisor'' of eight to nine employees on the swing shift. The General Counsel correctly points out (Br. 11) that Cedano does no bargaining unit work and dresses in a shirt and tie instead of a uniform. In addition Cedano receives a salary rather that hourly wages and works out of an office which he shares with other supervisors. All of this is indicia of supervisory status. *Wilson Tire Co.*, 312 NLRB 883 (1993), and judge's decision.

On the one hand, I find the evidence showing that Cedano had authority to act independently with some kinship to management is meager. Compare *Polynesian Hospital Tours*, 297 NLRB 228 (1989). On the other hand, Amato testified that as to his hiring of Espinosa and Chavez, he relied on the recommendations of Cedano and the two other supervisors because Espinosa and Chavez had not worked for Amato (Tr. 347). Based primarily on that evidence, I find that for all times material to this case, Cedano is a statutory supervisor. See *Wilson Tree Co.*, supra, fn. 9.[8]

b. *Ivy Jackson*

Both the General Counsel and the Charging Party contend that Jackson is a supervisor while Respondent argues that Jackson is equivalent to a leadman. As noted above, Jackson has the title of ''chief engineer.'' The work Jackson currently is doing and was doing when he allegedly made a certain statement to Viano is the same work as he did under Disney. Although Jackson was in the unit represented by the Operating Engineers, the membership in the unit is not necessarily inconsistent with supervisory status. See *Gratiot Community Hospital*, 312 NLRB 1075 fn. 2 (1993).

Jackson assigns work for each shift and posts it. He also does some evaluating of employees but spends most of his time performing bargaining unit work. Jackson's evaluation and recommended discipline of Viano and perhaps other employees as well were subject to independent review and changed on occasion. In the case of Viano, Jackson's evaluations were often changed to make Viano look better than Jackson had rated him (Tr. 107–109). When employees wanted time off or sick leave they went through Jackson, who was responsible for finding someone else to cover for the absent employee. When Viano discussed or delivered grievances to Jackson, the latter had only limited authority to settle issues. Jackson and Viano never worked the same shift so it is difficult to see how Jackson effectively supervised Viano. Moreover, ''the Act does not state or fairly imply that the highest ranking employee on a shift is necessarily a supervisor . . . .'' *Northcrest Nursing Home*, 313 NLRB 491, 500 (1993).

[8] Unlike Respondent's argument on brief in opposition to Ivy Jackson's designation as a statutory supervisor (Br. 6–10), Respondent does not contend at all on brief that Cedano is not a statutory supervisor. Instead, Respondent's argument opposes the General Counsel's witness Vaca strictly on credibility grounds. (Br. 12–13.)

It is true that Jackson recommended that Viano not be hired and he wasn't. It is however also true that Jackson recommended that two other applicants be hired, but they weren't. Accordingly I cannot find that Jackson's recommendations were effective. I find no evidence that Jackson interviewed employees for jobs. This was the task of Gonzalez who made all final employment decisions.

An employee does not become a supervisor merely because he gives some instructions or minor orders to other employees. *NLRB v. Wilson-Crissman Cadillac*, 659 F.2d 728 (6th Cir. 1981). Nor does an employee become a supervisor because he has greater skills and job responsibilities or more duties than fellow employees.

So far as I can tell, any discipline or warnings given by Jackson are merely reportorial and not an indicum of supervisor authority. See *Northcrest Nursing Home*, supra, 313 NLRB at 491–492 and cases cited at fn. 30.

Based on all the evidence, I find that Ivy Jackson is not a statutory supervisor because I cannot find the independent judgment coupled with the necessary ''kinship to management.'' Instead I find that Gonzalez is the appropriate statutory supervisor of the power plant employees. See *Great American Products*, 312 NLRB 962 (1993).

2. Applicable legal principles—Failure to hire

The General Counsel has the initial burden of establishing a prima facie case sufficient to support an inference that union or other activity which is protected by the Act was a motivating factor in Respondent's action alleged to constitute discrimination in violation of Section 8(a)(3). Once this is established, the burden shifts to Respondent to demonstrate that the alleged discriminatory conduct would have taken place even in the absence of the protected activity. If Respondent goes forward with such evidence, the General Counsel ''is further required to rebut the employer's asserted defense by demonstrating that the [alleged discrimination] would not have taken place in the absence of the employee['s] protected activities.'' *Wright Line*, 251 NLRB 1983 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983). The test applies regardless of whether the case involves pretextual reasons or dual motivation. *Frank Black Mechanical Services*, 271 NLRB 1302 fn. 2 (1984). ''[A] finding of pretext necessarily means that the reasons advanced by the employer either did not exist or were not in fact relied on, thereby leaving intact the inference of wrongful motive established by the General Counsel.'' *Limestone Apparel Corp*., 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982). See also *Handy Andy Inc. v. NLRB*, 943 F.2d 1354, 1359 (D.C. Cir. 1991).

In *Aces Mechanical Corp*., 282 NLRB 928, 930 (1987), the Board stated,

> . . . the right to hold union office clearly is protected by Section 7 [of the Act] and an employer violated Section 8(a)(3) by refusing to employ an individual because he has been designated as union steward. *John P. Bell & Sons*, 266 NLRB 607 (1983); see generally *Metropolitan Edison Co. v. NLRB*, 460 U.S. 693 (1983).

In the instant case three of the four alleged discriminatees had been shop stewards. The fourth, Vargas, had been a member of a Teamsters bargaining unit.

a. *Vaca and Vargas*

Both Vaca and Vargas filed applications to work for the Queen Mary under Respondent (G.C. Exhs. 6 and 7), but were not hired. I begin my analysis by crediting Cedano that he never even met with Vaca and Vargas, not to mention that he never made the statements attributed to him by Vaca. The General Counsel represented in his opening statement, that it knew where Vargas was working and therefore could have insisted that he come to the hearing to testify, particularly because Vargas was a party and particularly because his testimony was crucial for the rebuttal phase of the case. The mere fact that Vargas was working out of State does not excuse the failure to present critical rebuttal evidence.

Without the evidence relating to Cedano's alleged statement to Vaca, the General Counsel has little evidence even to establish a prima facie case, not to mention prevailing on the merits. I find that the General Counsel had failed to establish the violations charged and I will recommend that they be dismissed. Compare *Service Operations Systems of Nebraska*, 272 NLRB 1033 (1984).

b. *Viano*

In this case, I have found that Ivy Jackson made the statement attributed to him by Viano and Carrera, but that Jackson was not a statutory supervisor at the time. Accordingly, the statement in question is not binding on Respondent.[9] I have also found that in Viano's opinion, there was a personality conflict between Jackson and him. The Board has found an alleged ''personality conflict'' to be an insufficient reason for not hiring a job applicant where the evidence otherwise shows unlawful discrimination. See *Brownsville Garment Co*., 298 NLRB 507, 508 (1990).

Notwithstanding this alleged ''personality conflict,'' Jackson apparently selected Viano in 1992 to serve as acting chief steward, while Jackson went on vacation (Tr. 188). This appointment, as the Charging Party argues (Br. 5), is inconsistent with Jackson's testimony that Viano was not rehired because he had always been a marginal employee and one who didn't follow company policy. Of course, the temporary appointment is also inconsistent with Jackson's statement to Viano that he wasn't rehired because of problems he caused with the Union, Handlin, and Metcalff. And it is also inconsistent with Viano's testimony about a personality conflict between the two men. I don't know what to make of it, but it surely is not the key to the case.

The Board has taken the position that where a prima facie case has been established, I should consider whether an employer gives a credible explanation of its reasons for refusing

[9] Although not asked to do so by the General Counsel or the Charging Party, I have examined the record to determine whether Ivy Jackson could possibly be designated a 2(13) agent of Respondent. I find no evidence to show that under all the circumstances, employees ''would reasonably believe that the employee in question [Ivy Jackson] was reflecting company policy and speaking and acting for management.'' *Great American Products*, supra, 312 NLRB at 962. See also *Bio-Medical of Puerto Rico*, 269 NLRB 827, 828 (1984).

to hire or rehire union-affiliated applicants. See *Holo-Krome Co*., 293 NLRB 594, 596 (1989), enf. denied 907 F.2d 1343 (2d Cir. 1990), and *GSX Corp. of Missouri*, 295 NLRB 529, 531 (1989). To decide whether a prima facie case has been established here, I note that of the five power plant employees working under Disney only Viano, the shop steward was not rehired. And with Viano's application still pending, Respondent fired Smith who had worked under Disney and hired two employees for the power plant who had never worked there before. See *NLRB v. Foodway of El Paso*, 496 F.2d 117, 119–120 (5th Cir. 1974). Based on the above factors, I will assume without finding that the General Counsel has established a prima facie case that Viano was not hired in violation of Section 8(a)(1) and (3) of the Act. See *Weco Cleaning Specialists*, 308 NLRB 310 (1992).

Turning to Respondent's evidence to see whether Viano still would not have been hired absent his status as union steward, I begin with Gonzalez. Gonzalez testified that he made the final decision not to hire Viano, based on talking not only to Ivy Jackson, but also to another supervisor who was in charge of the power plant in 1991–1992, Mike Ludwig, who never testified. According to Gonzalez, Ludwig told him that Viano did not agree with a new system of giving engineers work orders while they were on watch in the power plants, which system began in 1991–1992 (Tr. 198–199). Gonzalez also testified that Viano's being a shop steward had nothing to do with Gonzalez' decision not to hire him. I credit this testimony of Gonzalez for the following reasons.

(1) On behalf of Respondent, Gonzalez hired Ivy Jackson who had been a shop steward himself 6 or 7 years before.

(2) There is no evidence that Viano performed the job of shop steward differently than Jackson did.

(3) The job of shop steward for both men was more like that of a messenger rather than an advocate. I agree with Respondent that Viano didn't cause trouble or otherwise perform his job in a way which would cause Gonzalez not to want to hire him because he had been a shop steward.

(4) There is no evidence of animus by Respondent or Gonzalez against the Operating Engineers, the Teamsters, or the Seafarers.

(5) When Everett Smith, a former member of the Operating Engineers bargaining unit, did not perform in accord with Gonzalez' expectations, he was fired immediately, sometime in 1993.

For the reasons stated above, I will recommend to the Board that this allegation be dismissed.[10]

c. *Quental*

Unlike Viano, the General Counsel produced no credible statements by alleged supervisors which would tend to show unlawful motive. Instead the General Counsel relies on circumstantial evidence which can be persuasive As noted above, Gonzalez had five applications from Carpenters, but he needed only two. Accordingly, Gonzalez hired the Padilla brothers whom Gonzalez allegedly judged to be better qualified than Quental. The latter described by Gonzalez as a ''marginal'' employee that is, an employee whose work was ''just average'' (Tr. 215). Assuming for the sake of argument, that Gonzalez could accurately measure the work of Quental against the work of the Padilla brothers, there is no showing on this record how Gonzalez measured the work of Quental against the work of Little and San Pedro, who had never worked for the Queen Mary before and were hired after responding to a newspaper ad.

In this case, I find that the General Counsel has established a prima facie case. In support of my conclusion, I note those factors listed in support of an assumed prima facie case for Viano. To those factors, I note that 6 months before his layoff, Quental was promoted to lead carpenter, apparently by his then Supervisor Mike Ludwig, who did not testify. As lead carpenter, Quental was responsible for the work of six employees. This fact is inconsistent with an employee who did only average or marginal work.[11]

Another factor which compels a prima facie case concerns certain conversations between Quental and other employees while the former was supposed to be working. Gonzalez conceded that some of these conversations may have dealt with the filing of grievances and contributed to Gonzalez' perception of Quental as a marginal or average employee (Tr. 237).

In deciding whether Respondent has rebutted the General Counsel's prima facie case, I count those five factors listed above which caused me to recommend dismissal of Viano's case. In addition, I note the list of names prepared by Respondent reflecting those new hires who formerly worked at the Queen Mary in the employee unit represented by the Teamsters (52 employees) (Respondent Exhibit). A second list for Respondent's engineering department reflects the names of new hires who formerly worked at the Queen Mary in the unit represented by the Operating Engineers (15 out of 37) (R. Exh. 2). This evidence proves nothing with respect to shop stewards, and I find it is entitled to little weight.

Based on all the evidence with respect to Quental, I find that Respondent has failed to rebut the General Counsel's prima facie case. Accordingly, I find that the failure to hire Quental violates Section 8(a)(1) and (3) of the Act. See *Crafts Precision Industries*, 305 NLRB 894, 895–896, enfd. in relevant part 16 F.3d 24 (1st Cir. 1994).

CONCLUSIONS OF LAW

1. Respondent RMS Foundation, Inc., d/b/a Queen Mary is an employer engaged in unfair labor practices affecting commerce within the meaning Section 2(6) and (7) of the Act.

2. Operating Engineers, Local Union No. 501 is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) and (3) of the Act by refusing to hire job applicant Eugene Quental because of his activities as a union steward under Queen Mary's prior management or for other protected concerted activities.

4. For all time material to this case, Ivy Jackson was not a statutory supervisor.

5. Other than specifically found here, Respondent has committed no other unfair labor practices.

[10] To avoid the necessity of remand, I make the following alternative findings: If on appeal, Ivy Jackson is found by the Board to be a statutory supervisor, I would find that his statement to Viano violates the Act and constitutes sufficient evidence of unlawful motivation by Respondent. Accordingly, I would find the failure to rehire Viano violated Sec. 8(a)(1) and (3) of the Act.

[11] I also note that in 1986, Quental helped Gonzales work on the roof of a house owned by Gonzales and leased to tenants.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

I shall recommend that Respondent offer Eugene Quental a job as journeyman carpenter. Further, Respondent shall be directed to make Quental whole for any and all loss of earnings and other rights, benefits, and emoluments of employment he may have suffered by reason of Respondent's discrimination against him with interest. Backpay shall be computed in the manner set forth in *F. W. Woolworth Co*., 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987); See also *Florida Steel Corp*., 231 NLRB 651 (1977), and *Isis Plumbing Co*., 138 NLRB 716 (1962).

Respondent shall also be required to preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order and to otherwise determine that the Order has been fully complied with.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, RMS Foundation, Inc., d/b/a Queen Mary, Long Beach, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to hire job applicants because they previously served as union stewards or engaged in union or other protected concerted activities.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Eugene Quental a position as a journeyman carpenter or, if that position no longer exists, to a substantially equivalent position without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make whole Eugene Quental for any loss of pay he may have suffered as a result of the unlawful discrimination against him in the manner set forth in the remedy section.

(c) Preserve and, on request, make available to the National Labor Relations Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to effectuate the backpay provision of this Order.

(d) Post at its main office in Long Beach, California. a copy of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''